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Hearing Date: February 28, 2024
Hearing Time: 10:00 a.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

JANNA COLANGELO, Chapter 7
Case No. 23-22355(SHL)

Debtor.

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**NOTICE OF HEARING ON MOTION OF BUSINESS
FINLAND, INC. TO COMPEL COMPLIANCE WITH
DOCUMENT SUBPOENAS PURSUANT TO FEDERAL RULES
OF BANKRUPTCY PROCEDURE 2004 AND FOR SANCTIONS**

PLEASE TAKE NOTICE, that upon the Motion dated February 6, 2024 (the “Motion”) of Business Finland USA, Inc. (“Business Finland”), creditor and party in interest in the above-captioned Chapter 7 Proceeding, by and through its undersigned counsel, to compel compliance with document subpoenas pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and for sanctions, a hearing will be conducted via **Zoom for Government** before the Honorable Sean H. Lane, United States Bankruptcy Judge, at the United States Bankruptcy Court, Southern District of New York (White Plains Division) on the **28th day of February, 2024 at 10:00 a.m.**, together with such other and further relief as is just, proper and equitable under the circumstances.

PLEASE TAKE FURTHER NOTICE, that this hearing shall take place virtually using Zoom for Government. If you wish to appear at the hearing, you must register your appearance

utilizing the Electronic Appearance portal (<http://ecf.nysb.uscourts.gov/cgi-bin/nysbAppearances.pl>) located on the Court's website by 4:00 p.m. one (1) business day prior to the hearing.

PLEASE TAKE FURTHER NOTICE, that objections to the relief requested in the Motion must be in writing, stating with specificity the basis or bases on which such party in interest objects to the within Motion, filed with the Bankruptcy Court at the Court's website www.nysb.uscourts.gov (Password and Login Required) (with a copy delivered directly to Chambers) and served upon Kirby Aisner & Curley LLP, 700 Post Road, Suite 237, Scarsdale, New York 10583, Attn: Julie Cvek Curley, Esq., so as to be received no later than seven (7) days prior to the hearing date.

Dated: Scarsdale, New York
February 6, 2024

KIRBY AISNER & CURLEY LLP
Attorneys for Business Finland USA, Inc.
700 Post Road, Suite 237
Scarsdale, New York 10583
(914) 401-9500

By: /s/ Julie Cvek Curley
Julie Cvek Curley, Esq.

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**MOTION OF BUSINESS FINLAND USA, INC. TO COMPEL
COMPLIANCE WITH DOCUMENT SUBPOENAS
PURSUANT TO FEDERAL RULES OF BANKRUPTCY
PROCEDURE 2004 AND FOR SANCTIONS**

**TO: HONORABLE SEAN H. LANE,
UNITED STATES BANKRUPTCY JUDGE:**

Business Finland USA, Inc. (“Business Finland”), creditor and party in interest in the above-captioned Chapter 7 Proceeding, by and through its undersigned counsel, submits this motion (the “Motion”) to compel compliance with document subpoenas pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and for sanctions. In support of the Motion, Business Finland respectfully submits the Declaration of Julie Cvek Curley (the “Curley Decl.”) filed herewith, and represents as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).
2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested include section 105(a) of Title 11 of the United States Bankruptcy Code (the “**Bankruptcy Code**”) and Bankruptcy Rule 2004 and 9016, and Rule 45 of the Federal Rules of Civil Procedure.

BACKGROUND

4. On August 22, 2023, the Court entered an Order authorizing the production of documents and examinations pursuant to Bankruptcy Rule 2004 (the “Order”, ECF No. 21). *See*, Curley Decl., ¶5.

5. Pursuant to the Order, Business Finland served document subpoenas on Ronald Colangelo (the “Husband”) and Blacklabrador.com, Inc. (“Black Labrador”) on August 30, 2023. *See*, Curley Decl. ¶6. The subpoenas served upon Husband and Black Labrador were returned to sender, marked as “Unclaimed”, “Unable to Forward” and “Return to Sender”. *See*, Curley Decl. ¶6 and Exhibit A.

6. On November 10, 2023, Business Finland filed a letter to this Court setting forth its intention to file this Motion, which letter was also served via next business day delivery to the Debtor, Husband, and Black Labrador. *See*, Curley Decl. ¶7 and Exhibit B.

7. At a hearing held on December 13, 2023, the above captioned debtor, Jaana Colangelo (the “Debtor”) advised the Court that her Husband had moved and now resided at 68 Faneuil Place, New Rochelle, New York 10801. *See*, Curley Decl. ¶8.

8. On December 21, 2023, Business Finland served the document subpoenas on the Husband and Black Labrador at this new address. *See*, Curley Decl. ¶8 and Exhibit C. Pursuant to the Order and subpoenas, Husband and Black Labrador were ordered to produce documents no later than 21 days’ from service of the subpoenas, i.e., by January 11, 2024. *See*, Order at ¶ 4.

9. On or about January 12, 2024, a package was delivered to the undersigned's office from "R Colangelo" containing the bank statements of "Blacklabrador Com" for the period of January 1, 2019 through November 30, 2020 (the "*Blacklabrador Bank Statements*").¹ See, Curley Decl., ¶9. No other documents were enclosed in the package and Business Finland was unable to ascertain whether the package was responsive from Husband or Black Labrador. *Id.* In any event, the bank statements provided were wholly deficient in response to the subpoenas served upon Husband and Black Labrador. *Id.*

10. To date, Business Finland has not received any documents or any response, other than the Black Labrador Bank Statements, from Husband or Black Labrador, which is only a partial responses to the subpoenas. See, Curley Decl. ¶10.

11. At a hearing held on January 31, 2024, the Court authorized Business Finland to file this Motion. See, Curley Decl. ¶7.

RELIEF REQUESTED AND BASIS FOR RELIEF

12. By this Motion, in accordance with Bankruptcy Rules 2004 and 9016, Business Finland seeks entry of an order compelling the Husband and Black Labrador to comply with the document subpoenas propounded by Business Finland and an award of its attorneys' fees and costs incurred in connection with this motion.

13. Bankruptcy Rule 2004(c) allows this Court to compel the production of documents in accordance with Bankruptcy Rule 9016.

14. Bankruptcy Rule 9016 incorporates Rule 45 of the Federal Rules of Civil Procedure, which provides for the issuance of a subpoena for the production of documents.

¹ The first page of the bank statement for January 1 – 31, 2019 was missing.

Business Finland caused such subpoenas to be served on the Husband and Black Labrador on August 30, 2023, and again on December 21, 2023. *See*, Exhibits A and C.

15. While there was a partial response by the production of the Black Labrador Bank Statements, the production is deficient for several reasons:

- i. The production fails to identify which party produced the Black Labrador Bank Statements;
- ii. The production does not include bank statements for the entire period requested even though a review of the bank statements suggests that the account was open prior to January 1, 2019, and subsequent to November 30, 2020 (the request for the period of May 9, 2017 to the present);
- iii. The production fails to include all of the other documents requested, or an affidavit with explanation why the documents cannot be provided.

16. Based on Business Finland's review of books and records and documents previously produced, the Debtor diverted monies from Business Finland's bank accounts to Husband and Black Labrador. Business Finland believes that the Debtor, Husband, and Black Labrador are concealing assets from the Debtor's creditors and this Court, and further believes that the Debtor has transferred all of her assets to her Husband, Black Labrador, or other subsequent entities that may be discovered upon compliance with the subpoenas.

17. Pursuant to Federal Rule of Civil Procedure 45(g), the court may "hold the recipient of a subpoena in contempt if he or she fails to obey the subpoena with an adequate excuse." *In re Parikh*, 397 B.R. 518, 526-27 (E.D.N.Y. 2008). "The prerequisites of a finding of contempt are that the subpoena was clear and unambiguous, there is clear and convincing proof of

noncompliance, the recipient does not attempt to comply with reasonable diligence, and that the recipient is given the notice and opportunity to be heard.” *Id.* at 527. As discussed, all of those factors are clearly met in this case. Thus, the Debtor, Husband, and Black Labrador should be obligated to pay fines for every day that the requested documents are not produced. *See id.* (awarding \$100.00 per day until compliance with a Rule 2004 subpoena requesting documents and an examination).

18. Likewise, Business Finland is entitled to its attorneys’ fees and costs in connection with filing the attached motion. *See id.* at 526 (denying a motion for reconsideration and awarding attorneys’ fees and costs in connection with filing a motion to compel compliance with a Rule 2004 subpoena and opposing a motion for reconsideration); *see also In re Consolidated Meridian Funds*, No. 10-17952, 2013 WL 150163, at *13 (Bankr. W.D. Wash. Apr. 5, 2013) (“Fees and costs incurred by the complaining party in enforcing the subpoena and additional fees and costs incurred as the result of failure to fully comply with the Subpoena are an appropriate failure for a party’s failure to comply with a subpoena.”).

19. As set forth in the Curley Decl., Business Finland has incurred attorneys’ fees and costs in connection with this Motion in the amount of \$10,782.95. *See*, Curley Decl. ¶12 and Exhibit D. Accordingly, Business Finland respectfully requests that it be awarded damages in the amount of \$10,782.95.

NOTICE

20. Notice of this Motion has been provided to (i) the Debtor and her counsel, (ii) Ronald Colangelo, (iii) Black Labrador, (iv) the Office of the U.S. Trustee; (v) the Chapter 7 Trustee; and (vi) all parties having filed a notice of appearance. Business Finland submits that said

notice is adequate and proper.

CONCLUSION

21. For all of the foregoing reasons, Business Finland, respectfully requests that this Court: (i) enter the annexed Order that compels the Husband and Black Labrador to comply with Rule 2004 subpoenas served on them, (ii) hold the Husband and Black Labrador in contempt and Order them to pay \$100.00 for every day that they do not comply with the annexed Order; (iii) award Business Finland' its attorneys' fees and costs in connection with its motion to compel, together with such other and further relief as may be appropriate under the circumstances.

Dated: Scarsdale, New York
February 6, 2024

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